

STATE OF MICHIGAN
COURT OF APPEALS

RHONDA FERRERO,

Petitioner-Appellant,

v

WALTON TOWNSHIP,

Respondent-Appellee.

FOR PUBLICATION
February 23, 2012

No. 302221
Michigan Tax Tribunal
LC No. 3770557

Advance Sheets Version

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

OWENS, J. (*dissenting*).

I respectfully dissent from the majority's opinion stating that the Michigan Tax Tribunal (MTT) erred when it concluded that the money received from a property tax credit under Michigan's homestead property tax credit, MCL 206.520(1), should be treated as income for purposes of petitioner's qualification for a poverty exemption from property taxes. I agree with the decision of the MTT and would affirm the denial of petitioner's poverty exemption.

In reviewing a decision of the MTT, we consider "whether the tribunal erred in applying the law or adopted a wrong principle." *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011) (citation omitted). Findings of fact are taken as final as long as they are supported by more than a scintilla of the evidence. *Fairplains Twp v Montcalm Co Bd of Comm'rs*, 214 Mich App 365, 372; 542 NW2d 897 (1995). Resolution of this appeal involves a question of statutory interpretation, which we review de novo. *Klooster*, 488 Mich at 295.

"In general, tax [exemption] statutes must be strictly construed in favor of the taxing authority." *Mich United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985). With regard to interpreting statutory exemptions:

"An intention on the part of the legislature to grant an exemption from the taxing power of the State will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, . . . it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption[.] . . . In other

words, . . . taxation is the rule, and exemption the exception Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all” [*Stege v Dep’t of Treasury*, 252 Mich App 183, 189; 651 NW2d 164 (2002), quoting *Guardian Indus Corp v Dep’t of Treasury*, 243 Mich App 244, 249-250; 621 NW2d 450 (2000), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed), § 672, p 1403.]

The property tax exemption for persons unable to pay because of poverty is governed by MCL 211.7u, which provides, in relevant part:

(1) The principal residence of persons who, in the judgment of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act. . . .

(2) To be eligible for exemption under this section, a person shall do all of the following on an annual basis:

* * *

(e) Meet the federal poverty guidelines updated annually in the federal register . . . or alternative guidelines adopted by the governing body of the local assessing unit provided the alternative guidelines do not provide income eligibility requirements less than the federal guidelines.

* * *

(4) The governing body of the local assessing unit shall determine and make available to the public the policy and guidelines the local assessing unit uses for the granting of exemptions under this section. The guidelines shall include but not be limited to the specific income and asset levels of the claimant and total household income and assets.

Under the homestead property tax credit, MCL 206.520(1), “[s]ubject to the limitations and the definitions in this chapter, a claimant may claim against the tax due under this act for the tax year a credit for the property taxes on the taxpayer’s homestead deductible for federal income tax purposes” MCL 206.520(3) allows the credit to be paid directly to the taxpayer if the credit exceeds the taxpayer’s tax liability. *Butcher v Dep’t of Treasury*, 141 Mich App 116, 122; 366 NW2d 15 (1984).

The homestead property tax credit is not a “tax refund” under MCL 205.30, which states, in part:

(1) The department shall credit or refund an overpayment of taxes; taxes, penalties, and interest erroneously assessed and collected; and taxes, penalties, and interest that are found unjustly assessed, excessive in amount, or wrongfully

collected with interest at the rate calculated under [MCL 205.23] for deficiencies in tax payment.

Respondent characterizes the homestead property tax credit as a “tax refund.” Were this an actual tax refund, this money would not be used to calculate petitioner’s income because it would merely be a return of petitioner’s own money that had been improperly paid to the state.

However, the homestead property tax credit is not a “tax refund”; rather it is a “refundable tax credit.” Unlike a tax refund, for which the taxpayer has already overpaid or incorrectly paid the tax with his or her own money and is simply reclaiming the money that was erroneously paid out, a refundable tax credit pays a taxpayer from state funds a sum equal to a portion of, in this case, property taxes that were properly paid to a local government. As such, the homestead property tax credit is an age- and means-tested program to distribute money to recipients on the basis of their need, as determined by the formulas in MCL 206.522, in order to ameliorate the burden of their homestead property taxes and is not a refund of taxes incorrectly paid. Thus, the homestead property tax credit is income for purposes of calculating eligibility for the poverty exemption under MCL 211.7u.

In sum, I would conclude that the MTT did not err by upholding respondent’s denial of petitioner’s request for a poverty exemption. Petitioner’s income was properly calculated by including money she received from the Michigan homestead property tax credit.

I would affirm.

/s/ Donald S. Owens